

Legal and Institutional Reform:

Summary of USAID Commercial Legal Reform Assessments for Europe and Eurasia

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1st Generation Legal Reform- Fall of the Iron Curtain (circa 1989)

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- ◆ Congress enacts SEED and FSA Legislation for rapid five year transformation of CMEA economies.
- ◆ Commercial Law Reform projects typically transplanted model laws, ending with enactment.
- ◆ Results:
 - Transplants frequently did not “take”.
 - Weak application and enforcement.
 - Monopoly rent seeking behavior.
 - Anti-business climate



2nd Generation Legal Reform- Euphoria Fades (about 1995)

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- ◆ Assistance providers perplexed over the lack of enforcement of “good laws”.
- ◆ Reform activities shift focus to building institutional capacity (through training and equipment) in order to create a platform for enforcement.
- ◆ Results:
 - Northern European countries succeed (Poland, Hungary, Czech, and Baltic countries).
 - Southeast European and NIS fail to achieve sustainable improvements.



Need for a 3rd Generation Legal Reform- 1997

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- ◆ Assistance providers perplexed over poor enforcement, blame lack of political will.
- ◆ USAID managers seek better understanding of commercial legal reform
 - Quantify “implementation-enforcement gap”
 - Create numerical indicators that capture health of legal frameworks—especially useful for number-crunchers and upper level decision makers.
 - Incorporate latest theoretical trends, like NIE.



- ◆ History and culture matter.
 - Informal institutions have deeper roots than formal ones.
- ◆ Legal and Institutional Reform should not just be left to the lawyers (or the Professors).
 - Writing a law does not accomplish reform.
- ◆ Laws must respond to the needs of stakeholders
 - Dynamic business environments mean that the legal system must be able to adapt to changed circumstances over time.
- ◆ Demand for law matters
 - Private sector interest can be cultivated; it's necessary in shaping and driving reform forward.



The CLIR Diagnostic—E&E Sets out to Devise a Set of Indicators for the Assessment Function:

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- ◆ Minimize subjectivity through fixed sets of questions.
- ◆ Quick results: 2 to 3 week in-country diagnostic assessments.
- ◆ Low Cost: 3 to 5 person teams and local experts.
- ◆ Emphasis on using *available* public information.
- ◆ “360 degree” input from key stakeholders including government, subject-matter experts, private sector actors, and “end users.”



- ◆ *Black letter law*

- How closely does it reflect emerging global standards?

- ◆ *Implementing Institutions*

- Implementers and enforcers must be able to do so efficiently, effectively, & reliably.

- ◆ *Supporting Institutions*

- Measures the health of the Civil Society of law—users and other stakeholders.

- ◆ *Sustainability*

- Can users' changing needs be accommodated through the legal and institutional reform process?



Disclaimer:

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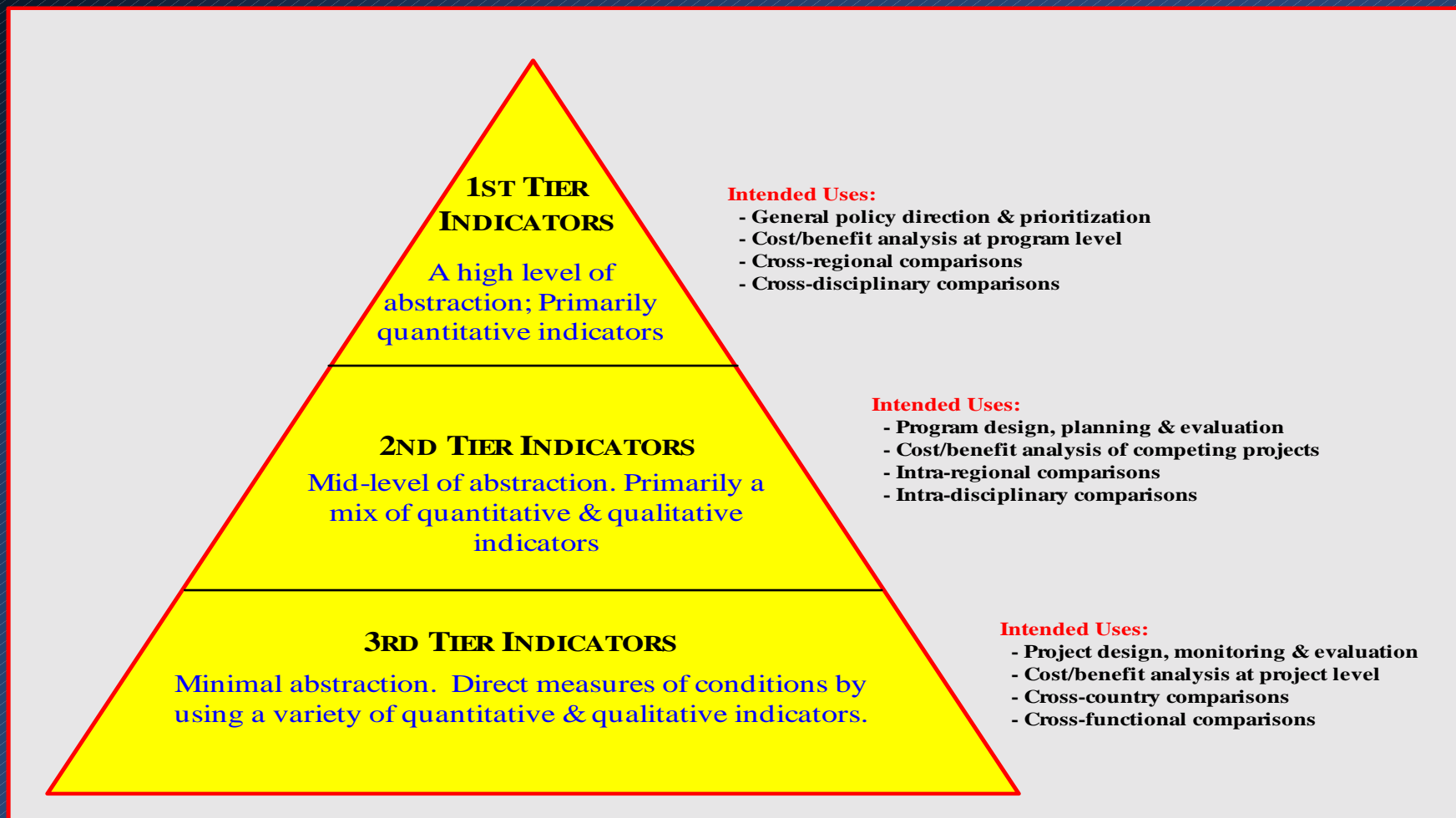
- ◆ Designing indicators is a process of approximation and compromise.
- ◆ Indicators identify conditions, which if found to exist, provide *reasonably* reliable indications of the existence of other conditions.



Three Tiers of Indicators

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STRATEGY FOR C-LIR INDICATOR DEVELOPMENT & USE



Result: Indicator Score Cards

Users' Guide: Navigating the C-LIR Indicator Tables

7 areas of commercial law are assessed in this study

The "reference value" is the maximum possible raw score

Assessment results are organized in columns by country

Within each area of law, 4 "Dimensions" of C-LIR are evaluated

Shaded rows contain Tier I indicator results

Tier II indicator results appear in these rows.

SUBSTANTIVE AREA		REF.	POL	ROM	UKR		KAZ				
A.	BANKRUPTCY		78%	54%	37%		50%				
	Legal Framework	280	224	80%	166	59%	114	41%	168	60%	
	Implementing Institutions	170	136	80%	105	62%	76	45%	87	51%	
	Supporting Institutions	200	151	76%	104	52%	66	33%	97	49%	
	Market - Bankruptcy	290	225	78%	130	45%	81	28%	119	41%	
B.	COLLATERAL		77%	32%		48%		35%			
	Legal Framework	140	126	90%	62	44%	This column contains the 'raw' scores for Collateral				
	Implementing Institutions	210	165	79%	27	33%					
	Supporting Institutions	190	123	65%	66	35%					
	Market - Collateral	310	234	75%	114	37%					
C.	COMPANY		79%	62%							
	Legal Framework	190	153	81%	119	63%	90	47%	118	62%	
	Implementing Institutions	270	205	76%	198	73%	140	52%	182	67%	
	Supporting Institutions	100	82	82%	70	70%	42	42%	58	58%	
	Market - Company	270	211	78%	117	43%	89	33%	130	48%	
D.	COMPETITION		80%	60%		41%		62%			
	Legal Framework	210	172	82%	138	66%	115	55%	135	64%	
	Implementing Institutions	220	178	81%	136	62%	92	42%	141	64%	
	Supporting Institutions	220	178	81%	136	62%	92				
	Market - Competition	290	226	78%	142	49%	80				
E.	CONTRACT		80%	63%			This cell contains Tier I indicator for Contract				
	Legal Framework	90	75	83%	67	74%					45
	Implementing Institutions	180	150	83%	132	73%					89
	Supporting Institutions	70	55	79%	46	66%					35
	Market - Contract	310	234	75%	114	37%	92	30%	192	62%	
F.	FDI		77%	57%		41%		66%			
	Legal Framework	290	253	87%	278	96%	259	89%	240	83%	
	Implementing Institutions	190	155	82%	110	58%	35	18%	129	68%	
	Supporting Institutions	200	131	66%	76	38%	56	28%	100	50%	
	Market - FDI	310	234	75%	114	37%	92	30%	201	65%	
G.	TRADE		68%	54%			These cells contain II indicator for International				
	Legal Framework	280	260	93%	252	90%					158
	Implementing Institutions	180	128	71%	96	53%					61
	Supporting Institutions	180	88	49%	72	40%					35
	Market - Inter Trade	310	188	61%	107	35%	66				
AGGREGATE TOTALS			77%	55%							
	Legal Framework	1480	1263	85%	1082	70%	888	50%	1021	66%	
	Implementing Institutions	1420	1117	79%	804	56%	611	42%	816	57%	
	Supporting Institutions	1160	808	71%	570	52%	385	35%	553	48%	
	Market for C-LIR	2090	1552	74%	838	40%	592	28%	1002	48%	

This column contains the "raw" scores for Collateral

This cell contains the Tier I indicator result for Contract

These cells contain Tier II indicator results for International Trade

Tier III Indicator Table

Reference value for "Legal Framework"

Raw Score

Tier II Result

B.1	LEGAL FRAMEWORK - COLLATERAL	140	75	32%		
.1	Law recognizes personal guaranty	35	20	57%		
.2	Law recognizes 3 rd party personal guaranty	35	10	29%		
.3	Law recognizes bank guaranty	35	15	43%		
.4	Law recognizes security interests in real property (mortgage)	35	30	86%		

Tier III Indicators

Tier III Indicator results



Recent Work Performed In:

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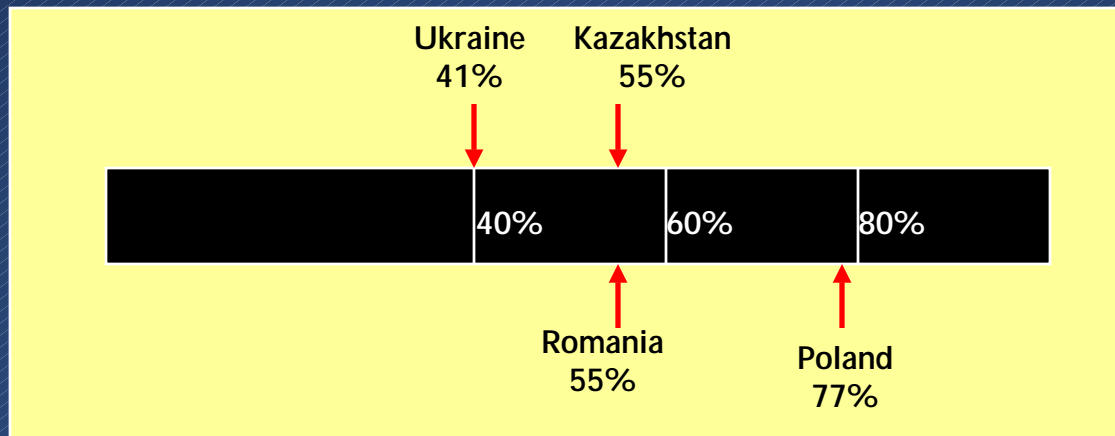
- Poland
- Romania
- Kazakhstan
- Ukraine
- Croatia
- Macedonia
- Albania
- Serbia
- Bulgaria
- Armenia



Scoring Makes Cross-Country Comparisons Easy

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- ◆ For example, overall rankings for the first four countries assessed were Poland (77%), Romania (55%), Kazakhstan (55%), and Ukraine (41%).



C-LIR Lessons Learned in Europe and Eurasia

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- ◆ Black letter laws are not enough:

Xenotransplants do not work!

- ◆ Building capacity in implementing institutions is important,

Still not enough!

- ◆ The key is to focus on supporting institutions. Why?

These are the agents of change for innovation!

- ◆ Well established supporting institutions will enable long-term sustainability.



What you can do...

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- ◆ Participate in a diagnostic assessment survey.
 - **Morocco, Egypt, Honduras, and Mongolia are possibilities.**
- ◆ Participate in the review and fine-tuning of the indicator questions.
 - **This is regularly done on an annual basis.**



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www.Inside.usaid.gov/EE/mt/diagnosticreports.htm

